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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,877	12/28/2000	Frances Yen	89.US3.REG	8851
27206	7590	12/04/2002	EXAMINER	
GENSET JOHN LUCAS, PHD, J.D. 10665 SORRENTO VALLEY RD SAN DIEGO, CA 92121			DELACROIX MUIRHEI, CYBILLE	
ART UNIT		PAPER NUMBER		
				1614

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/751,877	YEN ET AL.
	Examiner	Art Unit
	Cybille Delacroix-Muirheid	1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 November 2002.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) 3-8 and 11 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2,9 and 10 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1,5,8.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

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### **DETAILED ACTION**

The following is responsive to Applicant's election received Nov. 6, 2002.

Applicant's election of Group I with a further election of SEQ ID NO: 3 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election is maintained for the reasons given in the office action mailed Oct. 1, 2002

Claims 3, 4-8, 11 are withdrawn from consideration.

#### ***Information Disclosure Statement***

Applicant Information Disclosure Statements received June 4, 2001 and Nov. 6, 2002 have been considered. Please refer to Applicant's copy of the 1449 submitted herewith.

#### ***Drawings***

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

#### ***Claim Objections***

2. Claims 10, ~~11~~<sup>15</sup> objected to because of the following informalities: in claims 10, ~~and 11,~~ line 1, before "of claim 9", the term "The polypeptide" should be deleted and replaced with -- The composition--. Appropriate correction is required.

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***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

4. Claims 1-2 and 9-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Edwards et al., 6,455,280 B1.

Edwards et al. disclose the invention substantially as claimed. Specifically, Edwards et al. disclose a pharmaceutical formulation comprising a GSSP-2 polypeptide represented by the amino acid sequence in SEQ ID NO:3. The formulations may be used in methods of inducing cytotoxicity of cancer cells. Please see col. 126, lines 28-57. The peptide, which has cytotoxic properties, may be used to treat benign or malignant neoplastic diseases. The peptide is administered directly to the site of the desired target cell or tissue. Please see col. 129, lines 30-35; col. 131, lines 18-32.

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***Conclusion***

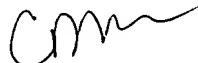
Claims 1-2 and 9-10 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cybille Delacroix-Muirheid whose telephone number is (703) 306-3227. The examiner can normally be reached on Tue-Fri from 8:30 to 6:00. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

CDM



Nov. 30, 2002



Cybille Delacroix-Muirheid  
Patent Examiner Group 1600